

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19731  
Docket Number CL-19759

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(J. F. Nash and R. C. Haldeman, Trustees of the Property  
( of Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7095)  
that:

(1) The Carrier violated the Rules Agreement as revised May 1, 1955, when it improperly, unreasonably and unjustly, removed Mr. Thomas J. Wills **from** service, after permitting his return from sick leave **of** absence on June 21, 1971, and would not allow his return to employment until August 24, 1971.

(2) The Carrier shall compensate Mr. Wills for all wage and employee benefits lost during period withheld from service, June 22nd. to August **23rd.**, 1971, and reimburse him for additional expense made necessary, in obtaining medical reports requested by the Carrier.

OPINION OF BOARD: This Claim is a request for wages lost **over** a period of two months and **two** days when Mr. Thomas J. Wills was withheld **from** service while the Carrier reviewed his physical condition. The specific rule involved between the Clerks' Organization and the Lehigh Valley Railroad Company is Rule 68 reading:

"Physical Examinations

It is recognized that **employees** coming within the scope of this agreement may be required to undergo physical examination by Company Surgeon upon orders to do so by the Company to determine their physical fitness to safely perform **the** duties of a position coming under this agreement. Physical examination shall be conducted with as little inconvenience as possible to the employee and, when possible, without loss of time. The Company Surgeon's fee for physical examinations will be paid by the Company. An employee failing to qualify on examination before Company Surgeon may, upon request, be reexamined by the Chief Surgeon. In the case of such examination, employee must make himself available at the appointed time and place without expense to the Company. If, upon examination, an employee is found physically unfit by the Chief Surgeon to continue in the service, he may appeal such decision through the General **Chairman**, supported by medical evidence from a doctor **of** his **own** choice. If, after review of his case by the Company he is **still** determined to be physically unfit to resume work, upon further appeal and additional supporting evidence by such employee, Management and General Chairman shall confer as to the further handling of such case."

Examination of Rule 68 discloses that **employees** may be required to undergo physical examination by a Company Surgeon when ordered to do so. The rule further provides that this examination shall be conducted with as little inconvenience to the **employee** as possible, and when possible, without loss of time. If the event the **employee** fails to pass a physical examination by a Company Surgeon, he has the right to appeal to the Company's Chief Surgeon. In situations where a **employee** passes the examination of the Company Surgeon, the rule is silent with respect to additional examination or review by the Chief Surgeon. In normal situations that is the end of the matter.

Thus, under the **provisions** of Rule 68 when an **employee** is examined by a Company Surgeon and passes the examination, the matter is ended and he is continued in employment. If the Company Surgeon refuses to pass the **employee** the matter may be appealed by the **employee** to the Chief Surgeon.

In this case we are confronted with a situation where the **employee** passed the examination of the Company Surgeon, was returned to service by the Carrier and then, having worked on his assignment, was taken out of service because the Company wanted his condition reviewed further by the Chief Surgeon. This review took two months and two days, and the **employee** lost full time work opportunities during that period. It is our opinion that Rule 68 does not give the Carrier license to hold an **employee** out of service pending review of the Company Surgeon's findings when such findings have approved an examined **employee** for service. On this basis the claim for time lost will be allowed. See Awards 5537 (Carter), 6237 (Stone), 8535 (Bailer), 10598 (Dolnick), 12184 (Kane) and 18797 (Devine).

There is insufficient evidence and argument in the record on that portion of Part 2. of the Statement of Claim dealing with a request for reimbursement of "additional expenses made necessary, in obtaining medical reports requested by the Carrier." We are, therefore, on this record unable to rule on this portion of the Statement of Claim and it **will** be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

**That** the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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That the Agreement was violated.

A W A R D

Claim sustained for wages lost between June 22 and August 23, 1971 inclusive; dismissed for reimbursement of additional expense:.

NATIONAL **RAILROAD** ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *E. G. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.